

SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

- Sec.
- 4010.1 Purpose and scope.
 - 4010.2 Definitions.
 - 4010.3 Filing requirement.
 - 4010.4 Filers.
 - 4010.5 Information year.
 - 4010.6 Information to be filed.
 - 4010.7 Identifying information.
 - 4010.8 Plan actuarial information.
 - 4010.9 Financial information.
 - 4010.10 Due date and filing with the PBGC.
 - 4010.11 Waivers and extensions.
 - 4010.12 Confidentiality of information submitted.
 - 4010.13 Penalties.
 - 4010.14 OMB control number.

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§ 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with the PBGC under section 4010 of ERISA. This part applies to filers for any information year ending on or after December 31, 1995.

§ 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, IRS, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Exempt entity means a person who does not have to file information and about whom information does not have to be filed, as described in § 4010.4(d) of this part.

Exempt plan means a plan about which actuarial information does not have to be filed, as described in § 4010.8(c) of this part.

Fair market value of the plan's assets means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

Filer means a person who is required to file reports, as described in § 4010.4 of this part.

Fiscal year means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

Information year means the year determined under § 4010.5 of this part.

§ 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11 of this part, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group. If a person other than a filer submits the information, the submission must also include a written power of attorney signed by a filer authorizing the person to act on behalf of one or more filers.

§ 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) The aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed \$50 million (disregarding those plans with no unfunded vested benefits);

(2) Any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of ERISA or section 412(n)(1)(A) and (B) of the Code have

been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code totaling in excess of \$1 million that, as of the end of the plan year ending within the information year, are still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits*—(1) *General*. Except as provided in paragraph (b)(2) of this section, for purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5).

(2) *Optional assumptions*. Prior to the first information year in which the mortality assumptions prescribed under section 302(d)(7)(C)(ii)(II) of ERISA apply to all of the plans maintained by a controlled group, the value of unfunded vested benefits for a plan may be determined by substituting for the respective assumptions used under paragraph (b)(1) of this section (but not using the alternative calculation method under § 4006.4(c) of this chapter) all of the following assumptions:

(i) An interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities (as reported in Federal Reserve Statistical Release G.13 and H.15) for the last full calendar month in the plan year;

(ii) The fair market value of the plan's assets; and

(iii) The mortality tables described in section 302(d)(7)(C)(ii)(I) of ERISA or section 412(l)(7)(C)(ii)(I) of the Code; provided that for any plan year ending on or after the effective date of an amendment changing the mortality assumptions used to value benefits to be paid as annuities in trustee plans under part 4044 of this chapter, those amended mortality assumptions shall be used.

(c) *Outstanding waiver*. Before the end of the statutory amortization period, a minimum funding waiver for a plan is considered outstanding unless—

(1) A credit balance exists in the funding standard account (described in section 302(b) of ERISA and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) A waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) No portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of ERISA or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities*. A person is an exempt entity if the person—

(1) Is not a contributing sponsor of a plan (other than an exempt plan);

(2) Has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) Has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million; and

(4) Has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

§ 4010.5 Information year.

(a) *Determinations based on information year*. An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–